



#5

PTO/SB/64 (10-00)

Approved for use through 10/31/2002. OMB 0651-0031

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)

TCS-428.0 US-1

First named inventor: Deborah Y. KWOH

Application No.: 09/523,033

Group Art Unit: 1645

Filed: 03/10/2000

Examiner: I. Fields

Title: METHOD FOR INCREASING HDL CHOLESTEROL LEVEL

Attention: Office of Petitions  
Assistant Commissioner for Patents  
Box DAC  
Washington, D.C. 20231NOTE: If information or assistance is needed in completing this form, please contact Petitions  
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

**1. Petition fee**☒ Small entity-fee \$ 640.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.☐ Other than small entity - fee \$ \_\_\_\_\_ (37 CFR 1.17(m))**2. Reply and/or fee**A. The reply and/or fee to the above-noted Office action in  
the form of a sequence listing (identify type of reply):

- ☐ has been filed previously on \_\_\_\_\_
- ☒ is enclosed herewith.

B. The issue fee of \$ \_\_\_\_\_

- ☐ has been paid previously on \_\_\_\_\_
- ☐ is enclosed herewith.

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[Page 1 of 2]

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01/24/2002 6TEFFERA 00000045 09523033

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## 3. Terminal disclaimer with disclaimer fee

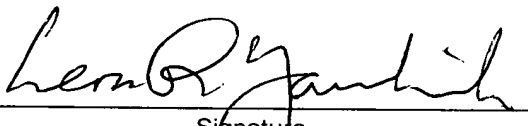
- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c)(III)(C) and (D))].

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October 26, 2001

Date



Signature

Telephone

Number: (617) 491-4343

Leon R. Yankwich, Reg. No. 30,237

Typed or printed name

YANKWICH & ASSOCIATES

130 Bishop Allen Drive

Address

Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☒ Other: a sequence listing in paper and computer-readable form

Cambridge, MA 02139

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CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

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☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

October 26, 2001

Date



Signature

Stephanie L. Leicht

Type or printed name of person signing certificate



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Kwoh et al.

Serial No.: 09/523,033

ART UNIT: 1643

Filed: March 10, 2000

Entitled: METHOD FOR INCREASING HDL  
CHOLESTEROL LEVEL

EXAMINER: I. FIELDS

Atty. Docket No.: TCS-428.0 US-1

**Attention: Office of Petitions**  
Asst. Commissioner for Patents  
BOX DAC  
Washington, DC 20231

**STATEMENT AND REPLY**  
**PURSUANT TO 37 C.F.R. §§ 1.137(b)(2) AND (3)**

Sir:

This Statement and Reply are made pursuant to 37 C.F.R. §§ 1.137(b)(2) and (3), on behalf of Applicants and assignee AVANT Immunotherapeutics, Inc. ("AVANT") in support of a Petition to revive the above-identified U.S. Application No. 09/523,033.

A Petition to Revive Under 37 C.F.R. § 1.137(b) and the fee according to 37 C.F.R. § 1.17(m) are submitted concurrently herewith. As this application was filed after June 8, 1995, no terminal disclaimer is believed to be required under 37 C.F.R. § 1.137(d).

A Notice of Abandonment (Paper No. 4) of this application was issued May 8, 2001, citing a failure of Applicants to reply to a Notice to Comply with Requirements for Patent Applications Containing Nucleotide Sequence and/or Amino Acid Sequence Disclosures (Paper No. 3, dated October 4, 2000).

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Reply Pursuant to 37 C.F.R. § 1.137(b)(2)

Pursuant to 37 C.F.R. § 1.137(b)(2), Applicants submit herewith a Reply to the Notice to Comply (Paper No. 3), which Reply consists of a paper copy and computer readable form (CRF) of a Sequence Listing containing three sequences (SEQ ID NOS:1-3) in compliance with the latest Patent Office provisions for submitting a Sequence Listing under 37 C.F.R. §§ 1.821 – 1.825. A preliminary amendment directing entry of the Sequence Listing into the specification and including a statement as to the identity of the paper copy and the CRF is also enclosed.

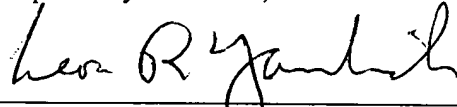
Statement Pursuant to 37 C.F.R. § 1.137(b)(3)

Applicants and current assignee AVANT believe revival of this application is proper under 37 C.F.R. § 1.137(b) for the following reason. During the time of the abandonment of this application, AVANT was engaged in good faith negotiations with Immune Response Corporation ("Immune Response"), the former assignee of this application, for the purpose of acquiring worldwide rights to the subject matter disclosed in U.S. Application No. 09/523,033. These negotiations culminated in an Assignment to AVANT of all rights in the Immune Response portfolio (see, copy of assignment in Tab A). The Assignment was recorded in the Patent Office on April 13, 2001 (Reel 11985, Frame 567). AVANT did not receive the application file from the former assignee until September 17, 2001, and was unaware until then that the U.S. Application Ser. No. 09/523,033 had gone abandoned for failure to submit a Sequence Listing. As the new owner of this invention has not had a full and fair opportunity to prosecute this invention before the United States Patent & Trademark Office, and did not intend that this application should be abandoned during its negotiation to acquire the right so to prosecute the invention, revival of the application to pending status is earnestly requested, in order to afford such opportunity to the new owner.

Accordingly, it is respectfully submitted that the delay in filing the enclosed reply and the resulting abandonment of this application from the due date of November 4, 2000 to the present is unintentional under 37 C.F.R. § 1.137(b).

In view of the above statement and the accompanying Sequence Listing in reply to the Notice to Comply, Applicants and assignee AVANT respectfully request that the delay by Applicants to reply to the Notice to Comply be deemed unintentional and that the enclosed Petition to Revive U.S. Application No. 09/523,033 under 37 C.F.R. § 1.137(b) be granted.

Respectfully submitted,



Leon R. Yankwich, Reg. No. 30,237  
Thomas R. Berka, Ph.D., Reg. No. 39,606  
Attorneys for Applicants  
YANKWICH & ASSOCIATES  
130 Bishop Allen Drive  
Cambridge, Massachusetts 02139  
telephone: (617) 491-4343  
telefax: (617) 491-8801

CERTIFICATE OF MAILING

The undersigned hereby certifies that the items of correspondence referred to above are being deposited with the U.S. Postal Service as First Class mail under 37 C.F.R. § 1.8, postage prepaid, in an envelope addressed to the Attention of the Office of Petitions, Asst. Commissioner for Patents, Box DAC, Washington, D.C. 20231 on the date indicated below:

October 26, 2001

date of mailing and signature



Stephanie L. Leicht



UNITED STATES DEPARTMENT OF COMMERCE  
 Patent and Trademark Office  
 ASSISTANT SECRETARY AND COMMISSIONER  
 OF PATENTS AND TRADEMARKS  
 Washington, D.C. 20231

SEPTEMBER 24, 2001

PTAS

YANKWICH & ASSOCIATES  
 LEON R. YANKWICH  
 130 BISHOP ALLEN DRIVE  
 CAMBRIDGE, MA 02139

**\*700007583A\***

\*700007583A\*

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 NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 09/21/2001

REEL/FRAME: 011985/0567  
 NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS).

ASSIGNOR:

THE IMMUNE RESPONSE CORPORATION

DOC DATE: 04/13/2001

ASSIGNEE:

AVANT IMMUNOTHERAPEUTICS, INC.  
 119 FOURTH AVE.  
 NEEDHAM, MASSACHUSETTS 02494

SERIAL NUMBER: 08482454  
 PATENT NUMBER:

FILING DATE: 06/06/1995  
 ISSUE DATE:

SERIAL NUMBER: 09523033  
 PATENT NUMBER:

FILING DATE: 03/10/2000  
 ISSUE DATE:

SHARON BROOKS, EXAMINER  
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FORM PTO-1595 (modified)

RECORD COVER SHEET

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Patent and Trademark Office

## PATENTS ONLY

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

## 1. Name of conveying party(ies):

The Immune Response Corporation

## 2. Name and address of receiving party(ies):

Name: AVANT Immunotherapeutics, Inc.

Internal Address:

Street Address: 119 Fourth Ave.

City: Needham

State: Mass.

ZIP: 02494

Country: USA

Additional name(s) & address(es) attached? ☐ Yes ☒ NoAdditional name(s) of conveying parties(ies) attached ☐ Yes ☒ No

## 3. Nature of conveyance:

☒ Assignment☐ Merger☐ Security Agreement☐ Change of Name☐ Other

Execution Date: August 13, 2001

## 4. Application number(s) or patent numbers:

If this document is being filed together with a new application, the execution date of the application is:

## A. Patent Application No.(s)

U.S. application Ser. No. 08/482,454 filed 6/6/95

U.S. application Ser. No. 09/523,033 filed 3/10/00

## B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

## 5. Name and address of party to whom correspondence concerning the document should be mailed:

Name: Leon R. Yankwich

Internal Address: Yankwich &amp; Associates

Street Address: 130 Bishop Allen Drive

City: Cambridge State: MA ZIP: 02139

6. Total number of applications and patents involved:  
two (2)

## 7. Total fee (37 CFR 3.41)....\$ 80.00

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Name of Person Signing

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Total number of pages comprising cover sheet: 1

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The Immune Response Corporation

## 2. Name and address of receiving party(ies):

Name: AVANT Immunotherapeutics, Inc.

Internal Address:

Street Address: 119 Fourth Ave.

City: Needham

State: Mass.

ZIP: 02494

Country: USA

Additional name(s) & address(es) attached? ☐ Yes ☒ NoAdditional name(s) of conveying parties(ies) attached ☐ Yes ☒ No

## 3. Nature of conveyance:

☒ Assignment☐ Merger☐ Security Agreement☐ Change of Name☐ Other

Execution Date: August 13, 2001

## 4. Application number(s) or patent numbers:

If this document is being filed together with a new application, the execution date of the application is:

## A. Patent Application No.(s)

U.S. application Ser. No. 08/482,454 filed 6/6/95

U.S. application Ser. No. 09/523,033 filed 3/10/00

## B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

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Internal Address: Yankwich &amp; Associates

Street Address: 130 Bishop Allen Drive

City: Cambridge State: MA ZIP: 02139

6. Total number of applications and patents involved:  
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## EXHIBIT A

### ASSIGNMENT

This Assignment, effective as of August 13, 2001, is made by The Immune Response Corporation, a California Corporation, having a place of business at 5935 Darwin Court, Carlsbad, California 92008 ("Assignor"), to AVANT Immunotherapeutics, Inc., a Delaware corporation, having a place of business at 119 Fourth Avenue, Needham, Massachusetts ("Assignee").

WHEREAS, Assignor is the owner of the Letters Patent and the applications for Letters Patent identified on the attached schedule by title, filing date, Serial No. and Attorney Docket No.;

WHEREAS, the parties desire to have a recordable instrument assigning the entire right, title and interest in and to said Letters Patent and said applications, and any Letters Patent that may be granted or issued from said applications in the United States and throughout the world (collectively, the "Assigned Patents");

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and pursuant to an agreement between Assignor and Assignee, Assignor sells, assigns, and transfers to Assignee, its entire right, title, and interest in and to the Assigned Patents and all inventions and discoveries disclosed therein.

Assignor agrees that, upon request and without further compensation, but at no expense to Assignor, Assignor will do all lawful acts, including the execution of papers and the giving of testimony, that may be necessary or desirable for obtaining, sustaining, reissuing, or enforcing the Assigned Patents in the United States and throughout the world, and for perfecting, recording, or maintaining the title of Assignee, its successors and assigns, to the Assigned Patents.

Assignor represents and warrants that he has not granted and will not grant to others any rights inconsistent with the rights granted herein.

Assignor authorizes and requests the Commissioner of Patents and Trademarks of the United States and of all foreign countries to issue any Letters Patent granted or issued from the Assigned Patents, whether on said applications or on any subsequently filed divisional, continuation, continuation-in-part or reissue applications, to Assignee, its successors and assigns, as the assignee of the entire interest in said Assigned Patents.

IN WITNESS WHEREOF, Assignor has executed this Assignment on the date provided below.

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THE IMMUNE RESPONSE CORPORATION  
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Signature

*Creighton W. Lawhead*

Title

*Vice President, Head of Commercial Affairs*

Date

*August 13, 2001*

SCHEDULE 1

ASSIGNED PATENTS

<u>Docket Ref.</u>	<u>Title</u>	<u>Filed</u>	<u>Serial Number</u>	<u>Country</u>
2117	Method for Increasing HDL Cholesterol Level	6/5/96	US96/09143	PCT
2913	Method for Increasing HDL Cholesterol Level	6/5/96	60912/96	Australia
2914	Method for Increasing HDL Cholesterol Level	6/5/96	2,223,177	Canada
2915	Method for Increasing HDL Cholesterol Level	6/5/96	96918201.3	European Patent Convention
2916	Method for Increasing HDL Cholesterol Level	6/5/96	9-501533	Japan
	Method for Increasing HDL Cholesterol Level	6/6/95	08/482,454	United States

And any patent applications claiming priority to any of the foregoing.

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